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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 122

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND E. R. HUGHES, C. C. CHILDERS, AND PAUL WALKER, COMPOSING THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA.

STATEMENT OF JURISDICTION.

HORACE G. McKEEVER.
HARRY O. GLASSER.
EDGAR A. DE MEULES.
GEO. S. RAMSEY.

(35,936)

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vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND E. R. HUGHES, C. C. CHILDERS, AND PAUL WALKER, COMPOSING THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, APPELLEES.

STATEMENT OF THE JURISDICTION OF THE UNITED STATES SUPREME COURT TO REVIEW ON APPEAL THE ORDER OF THE THREE-JUDGE COURT BELOW DENYING A TEMPORARY INJUNCTION.

The appellant, in support of the jurisdiction of this Court to review the above-styled cause on appeal respectfully states:

FIRST.

That appellant, as plaintiff below, commenced this action in the United States Court for the Western District of Oklahoma to enjoin the enforcement of (*a*) the Oklahoma Oil Curtailment Act, undertaking to vest the Corporation Commission of Oklahoma "with power to investigate and determine from time to time the actual value of such crude oil or petroleum by standards herein provided," upon determination of which by the Commission "the taking of crude oil or petroleum from any oil bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petfoleum" is prohibited, which in effect undertakes to vest the Corporation Commission with power to determine the price at which a producer of crude oil in Oklahoma must sell his oil upon production or quit producing, and (*b*) to enjoin the Corporation Commission of Oklahoma from making or enforcing various orders made by it prohibiting the appellant (and others similarly situated) from taking from its oil wells more than a small percentage of their oil production capacity, on the ground that said Curtailment Act within itself, and the orders of the Commission complained of, independent thereof or dependent thereon, violate the provisions of the Fourteenth Amendment to the National Constitution in that they and each of them deprive appellant of (1) its liberty of contract, (2) its property without due process of law, and (3) the equal

protection of the laws. Further, on the ground that the orders of the Corporation Commission complained of in the appellant's second amended and supplemental bill and amendment thereto violate the commerce clause of Section 8 of Article 1 of the National Constitution.

For a more definite statement of the constitutional questions raised by the pleadings and the record reference is here made to "APPELLANT'S DEFINITE STATEMENT OF THE POINTS UPON WHICH IT RELIES" for a reversal of this case, set forth in Appendix "A" hereto.

That the most pertinent sections of the Curtailment Act, as contained in Sections 7954 to 7958, inclusive, Oklahoma Compiled Statutes, 1921 (same being Sections 1, 2, 3, 4 and 5 of the Act approved February 11th, 1915) are as follows:

> "SECTION 7954. *Waste Prohibited.*—That the production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as to constitute waste, is hereby prohibited.
>
> "SECTION 7955. *Production and Sale Regulated—Corporation Commission.*—That the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited; and the actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the

United States at retail of the by-products of such crude oil or petroleum when refined, less the cost and a reasonable profit in the business of transporting, refining and marketing the same, and the Corporation Commission of this State is hereby invested with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided, and when so determined said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the State.

"SECTION 7956. *Waste Defined—Protection.*—That the term 'waste' as used herein, in addition to its ordinary meaning, shall include *economic waste,* underground waste, surface waste and *waste incident to the production of crude oil or petroleum in excess of transportation* or *marketing* facilities or *reasonable market demands.* The Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil.

"SECTION 7957. *Production Regulated—Discrimination of Purchaser Prohibited.*—That whenever the full production from any common source of supply of crude oil or petroleum in this State can only be obtained under conditions constituting waste, as herein defined, then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply, may take therefrom only

such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation bears to the total production of such common source of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum, by any person, firm, or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

"SECTION 7958—*Wells Gauged—Governor to Consent.*—That for the purpose of determining such production, a gauge of each well shall be taken under rules and regulations to be prescribed by the Corporation Commission, and said Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, and to employ or appoint such agents, with the consent of the Governor, as may be necessary to enforce this act."

That in addition to the above sections of the statute Section 7961 provides that "In addition to any penalty that may be imposed by the Corporation Commission for contempt" any violation of the Act "shall be a misdemeanor," punishable by "a fine in any sum not to exceed five thousand dollars ($5,000.00), or by imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment."

That Section 3498, Oklahoma Compiled Statutes, 1921, provides that "Any corporation, person or firm may be fined by the Corporation Commission such sum, not exceeding five hundred dollars, as the Commission may deem proper, for the violation of any of its rules or requirements; and each day's continuance of such violation, after due service upon such corporation, person or firm of the order or requirement of the Commission, shall be a separate offense." That a complete copy of the Curtailment Act is hereto attached as Appendix "B."

SECOND.

Appellant's application for a temporary injunction was heard before a three-judge court organized under the provisions of Section 266 of the Judicial Code, as amended (U. S. C. 380) in January, 1931, and denied in an opinion, two judges concurring and one dissenting, on the 9th day of February, 1931.

THIRD.

For the order appealed from denying the temporary injunction see R. page 172. On the 22nd day of April, 1931, "application for appeal was presented." (See R. 336.) On May 18th, 1931, time for filing record in the United States Supreme Court was extended to June 12th, 1931 (R. 348.)

FOURTH.

That under Section 266 of the Judicial Code, amended (U. S. C. 380), "an appeal may be taken direct to

the Supreme Court of the United States from the order * * * denying, after notice and hearing, an interlocutory injunction in such case."

FIFTH.

That it is unnecessary to cite decisions of this Court upholding its jurisdiction in this case, as the statute plainly does so, but in order to show that the appeal is not frivolous we refer to the fact that one of the judges dissented; that Section 2 of the Act (Section 7955, Oklahoma Compiled Statutes, 1921) is a price-fixing section and void under the authority of Williams *v.* Standard Oil Co., 278 U. S. 235; that Section 2 is not a separable part of the Act and the Act must fall as a whole, but if a separable part, then the balance of the Act, without Section 2, is too vague and uncertain to constitute due process of law as required by the Fourteenth Amendment to the National Constitution in that the statute does not define or prescribe any standard by which the Commission could define economic waste, underground waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or *reasonable market demand* (Connally *v.* General Construction Co., 269 U. S. 385; Cline *v.* Frink Dairy Co., 274 U. S. 445; International Harvester Co. *v.* Kentucky, 234 U. S. 216; United States *v.* Cohen Grocery Co., 255 U. S. 89); that the production and refining of crude oil is not a public or quasi public business (Tyson & Bro. *v.* Banton, 273 U. S. 418: Charles Wolf Packing Co. *v.* Court of Industrial Relations, 262 U. S. 522); that appellant

is a producer and refiner and controls ample transportation facilities.

SIXTH.

That the Corporation Commission, in making the orders complained of, acted in a legislative and administrative capacity, and although an appeal is allowed by the Curtailment Act to the State Supreme Court that court cannot exercise legislative powers (*In re* County Commissioners, 22 Okla. 435, 5th paragraph of the syllabus by the court; Atchison, T. & S. F. Ry. Co. *v.* State, 28 Okla. 797; St. Louis & S. F. R. Co. *v.* State, 28 Okla. 802; Shawnee Gas & Electric Co. *v.* State, 31 Okla. 505). The appellant had the right to invoke the jurisdiction of some court to test the validity of the Curtailment Act and the Commission's orders and in exercising that right had the privilege to elect to go into the United States Court without appealing to the State Supreme Court. The case falls completely in the rule in Bacon *v.* Rutland R. Co., 232 U. S. 134; also Prentis *v.* Atlantic Coast Line Co., 211 U. S. 210; Pacific Tel. & Tel. Co. *v.* Kuykendall, 265 U. S. 200; Pacific Tel. & Tel. Co. *v.* Cushman, 292 Fed. 930, and Oklahoma Natural Gas Co. *v.* Russell, 261 U. S. 290.

We respectfully submit that this Court has jurisdiction.

HORACE G. McKEEVER,
HARRY O. GLASSER,
EDGAR A. DE MEULES,
GEO. S. RAMSEY,
Attorneys for Appellant.

APPENDIX "A".

Appellant's Statement of Points Relied On.

(1) That Section 2 of the Act of the Oklahoma Legislature approved February 11th, 1915 (1915 Session Laws, 28, same as Sections 7954 to 7963, inclusive, Oklahoma C. St. 1921) hereinafter referred to as the Curtailment Act, undertakes to authorize the Oklahoma Corporation Commission to fix the price of crude petroleum oil produced in Oklahoma and is therefore void in that it is in violation of the Fourteenth Amendment to the National Constitution.

(2) That Section 2 of said Curtailment Act is not a separable part thereof and therefore the whole act must fall as in violation of the Fourteenth Amendment to the National Constitution.

(3) That if Section 2 of the Curtailment Act is so far separable that the remaining sections, or any part thereof, may be considered as independent of Section 2, then the Act, without Section 2, is too vague and uncertain to meet the requirements of due process of law guaranteed by the Fourteenth Amendment to the National Constitution.

(4) That the Curtailment Act is beyond the state's police power in that the production of crude oil is not a public or quasi public business.

(5) That the ownership of lands in fee and/or oil leases thereon and the extraction of crude petroleum oil therefrom through wells and the manufacture of the refined products from crude oil is not a devotion of appellant's property or business to a public use—that is, it is not a public or quasi public business authorizing the State Legislature to enact the said Cur-

tailment statute under the police powers of the State.

(6) That the Curtailment Act is in violation of the Fourteenth Amendment to the National Constitution in that it denies the appellant liberty of contract as defined by this court in Allgeyer v. State of Louisiana, 165 U. S. 578, and other decisions.

(7) That the Curtailment Act, as construed and enforced by the appellees, as members of the Oklahoma Corporation Commission, operates as a taking of appellant's property without due process of law guaranteed by the Fourteenth Amendment to the National Constitution.

(8) That appellees' rules and orders shown by the exhibits to appellant's Second Amended and Supplemental Bill, including the order of December 30th, 1930, No. 5413, being legislative in their nature and made by an instrumentality of the state, are state laws within the meaning of the National Constitution and although an appeal therefrom is allowed by the Curtailment Act to the Oklahoma Supreme Court, nevertheless as that court has no legislative power and can not be vested with such powers by the Legislature the appellant had the right to invoke the jurisdiction of the United States District Court to restrain the enforcement of said orders and rules of appellees without first appealing therefrom to the Supreme Court of Oklahoma.

(9) That each of the appellees' orders shown by exhibits to appellant's Second Amended and Supplemental Bill, including the order of December 30th, 1930, No. 5413, is void in that each as applied to appellant violates the commerce clause of Section 8 of Article 1 of the National Constitution.

(10) That appellees' orders complained of by appellant in its Second Amended and Supplemental Bill

and amendment thereto, including the order of December 30th, 1930, No. 5413, were made without any evidence before the Commission of actual or physical waste of crude petroleum in the Oklahoma oil fields in which appellant was and is a producer of crude oil and the enforcement of either of said orders against appellant constitutes a taking of appellant's property without due process of law and operates as a denial of appellant's property rights guaranteed by the Fourteenth Amendment to the National Constitution.

(11) That appellees' said orders, and each of them, are void because they and each of them were made without the Commission having first taken a gauge of each oil well as required by Section 5 of the Curtailment Act, thus rendering the enforcement of the orders, and particularly order No. 5413 of December 30th, 1930, under the high penalties prescribed by the Act and other Oklahoma statutes, such as excessive application of the appellees' powers as to deprive appellant of its property and liberty without that due process of law required by the Fourteenth Amendment to the National Constitution.

(12) That the pretended gauges of the oil wells upon which the potential production of crude oil was determined by the Commission and the orders complained of limiting the production of crude oil by appellant and other producers were based, are void and illegal gauges in that said gauges of the wells accepted and acted upon by the Commission were made by private persons, firms and corporations, and their employees, contrary to the Curtailment statute, and no gauge having been made or superintended by a state officer or impartial, uninterested official, each of appellees' orders is void in that the enforcement thereof, particularly in view of the high penalties prescribed

by the Curtailment Act and other statutes, deprives appellant of its property without due process of law.

(13) That appellant as the owner of the oil leases on lands in Oklahoma described in its Second Amended and Supplemental Bill is vested with the right to enter thereon, drill wells for oil and take through said wells all the oil it can find so long as it can find a market therefor satisfactory to itself or utilize in its own refinery, and that this right is safeguarded by the Fourteenth Amendment to the National Constitution.

(14) That appellant is the owner of valuable oil and gas leases in several of the Oklahoma oil fields from which it produces and had produced a long time before this suit was commenced and the orders of the Commission made, large quantities of crude oil which it manufactured into gasoline and other refined products at its refinery located at Enid, Oklahoma; that said Curtailment Act as enforced by the Commission by and through its orders complained of operates to deny appellant its liberty of contract and equal protection of the laws guaranteed by the Fourteenth Amendment to the National Constitution.

(15) That the Curtailment Act is an unconstitutional delegation of Legislative powers to the Corporation Commission, thus rendering the Commission's orders thereunder void.

APPENDIX "B".

House Bill No. 168, Chapter 38, Session Laws Oklahoma, 1915, Page 28.

Sections 7954 to 7963, Inclusive, Oklahoma Compiled Statutes 1921.

AN ACT defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of this Act, and declaring an emergency.

Be it enacted by the people of the State of Oklahoma:

Waste Prohibited.

SECTION 1. That the production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as to constitute waste, is hereby prohibited.

Production and Sale Regulated—Corporation Commission.

SECTION 2. That the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited, and the actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the cost and a reasonable profit in the busi-

ness of transporting, refining and marketing the same, and the Corporation Commission of this State is hereby invested with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided, and when so determined said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the State.

Waste Defined—Protection.

SECTION 3. That the term "waste" as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil.

Production Regulated—Discrimination of Purchaser Prohibited.

SECTION 4. That whenever the full production from any common source of supply of crude oil or petroleum in this State can only be obtained under conditions constituting waste, as herein defined, then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source

of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum, by any person, firm, or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

Wells Gauged—Governor to Consent.

SECTION 5. That for the purpose of determining such production, a gauge of each well shall be taken under rules and regulations to be prescribed by the Corporation Commission, and said Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, and to employ or appoint such agents with the consent of the Governor, as may be necessary to enforce this act.

Enforcement of Act—Hearings Before Corporation Commission.

SECTION 6. That any person, firm or corporation, or the Attorney General on behalf of the State, may institute proceedings before the Corporation Commission, or apply for a hearing before said Commission, upon any question relating to the enforcement of this act, and jurisdiction is hereby conferred upon said Commission to hear and determine the same. Said Commission shall set a time and place, when and where such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein, by publication in some newspaper or newspapers, having general circulation in the State, and in addition thereto, shall cause reasonable notice in writing to be

served personally on any person, firm or corporation complained against. In the exercise and enforcement of such jurisdiction, said Commission is authorized to determine any question or fact, arising hereunder, and to summon witnesses, make ancillary orders, and use mesne and final process, including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations, as now provided by law.

Appeals to Supreme Court—Effect on Orders.

SECTION 7. That appellate jurisdiction is hereby conferred upon the Supreme Court in this State to review the action of said Commission in making any order, or orders, under this act. Such appeal may be taken by any person, firm or corporation, shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the Corporation Commission. Said orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by the Supreme Court.

Penalty for Violation.

SECTION 8. That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00), or by imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment.

State May Secure Receiver—Extent and Manner.

SECTION 9. That in addition to any penalty imposed under the preceding section, any person, firm or corporation, violating the provisions of this act, shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the State through the Attorney General or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act.

Validity of Relative Sections of Act.

SECTION 10. That the invalidity of any section, subdivision, clause or sentence of this act shall not in any manner affect the validity of the remaining portion thereof.

Emergency.

SECTION 11. For the preservation of the public peace, health and safety, an emergency is hereby declared to exist by reason whereof this act shall take effect and be in force from and after its passage and approval.

Approved February 11, 1915.